



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00928/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 23 January 2018**

**Decision & Reasons
Promulgated
On 23 April 2018**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**S S K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Miss P Yong, Wimbledon Solicitors

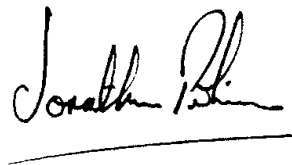
DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. We make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” against the decision of the Secretary of State refusing her asylum.
3. The claimant is a citizen of Sri Lanka who says that she comes from an LTTE supporting family and who has been seriously ill-treated by the Sri Lankan authorities that she left Sri Lanka. Given her level of family involvement and personal interest to the authorities and her continuing support to the cause of Tamil independence it is her case that she is in the category of people who would be at risk in the event of her return.
4. The First-tier Tribunal Judge is particularly experienced and believed the evidence. The Secretary of State’s challenge in the grounds is to the findings of fact saying essentially that they are unlawful. We do not agree.
5. The first point taken in the grounds is that the judge does not factor into her analysis the delay of some nine years between arriving in the United Kingdom and claiming asylum. We are not impressed with this point. We recognise that it is a statutory requirement to conclude that delay impacts adversely on credibility but it does not mean that a person cannot be believed because the claim is made late. It is perfectly plain on the face of the Decision and Reasons that the First-tier Tribunal Judge had in mind that the claim was late because she refers to it being late. What the Judge did not do, and where some criticism in this respect was due, is make express reference of the delay when she made her findings. We do not regard this as a serious omission. It was very clear, particularly from paragraph 38, the judge was very impressed with the evidence given by the claimant when she was talking about the assaults that she had experienced. It is trite but possibly worth emphasising that it is indeed recognised by the Secretary of State in her own policy documents that a person who has been a victim of sexual assault can be very reticent about making a complaint and although it is rarely, if ever, a bad thing to raise such a claim at the earliest possible opportunity a decision maker must be exceedingly circumspect in disbelieving a claim of the worst kind of sexual assault just because it was made late.
6. When the complaint was made it was impressive. It was consistent with the evidence given to the psychiatrist which was consistent with other evidence of physical harm. There is absolutely nothing wrong with the Judge’s finding that the claimant was sexually assaulted in the circumstances she describes. That of course does not entitle her to asylum but it goes a very long way to establishing her case.
7. Contrary to the impression created in the grounds there was other evidence before the Tribunal. There was evidence in the form of an affidavit from the claimant’s mother. Clearly affidavit evidence from overseas is from a person who is not subject to the jurisdiction of the United Kingdom courts and cannot be punished for telling lies. Further, evidence from a person so obviously inclined to support the claimant must

attract a degree of circumspection but there is no reason to assume that evidence is untruthful because it comes from a person's mother and supports the case that was before the Judge.

8. The contention in the grounds that the claimant's sister could have supported her is purely speculative. There is no basis for saying the claimant's sister would know about the assault and the evidence about the involvement of the brother in the LTTE that was supported by the mother. Neither do we see any merit in the speculation that GP records might have thrown up something of value. As indicated before, matters of sexual assault and mental ill health are not matters that necessarily progress in the way that a lay person might expect and it is dangerous to say that there *should* have been mental health evidence from the general medical practitioner. In any event there was evidence in the records which was picked up by the psychiatrist. The grounds really go nowhere in their challenge on credibility.
9. There is a little more merit in the second point in the grounds that the claimant satisfied the Judge that she was at risk because of her activities in the diaspora. Again more could have been said and, with the benefit of hindsight, it might have been better if more had been said but it is quite plain that the claimant gave evidence of her involvement. There is no reason at all to disbelieve the claimant just because she is the claimant. There was sufficient evidence before the judge to support a conclusion that she has been sufficiently involved in diaspora activities to come to have come to the attention of the Tamil authorities and to be at risk on return. In short, the grounds are no more than a challenge to the credibility findings which are at the very least adequately explained in the decision.
10. We dismiss the Secretary of State's appeal and uphold the decision of the First-tier Tribunal.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 20 April 2018